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18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA**

20 MICHAEL MCGINNIS and
21 CYNDY BOULTON, individually,
22 and on behalf of all others similarly
situated;

23 Civil Case No.: 2:23-cv-02426-SB-JPR

24

25 **STIPULATION TO DISMISS CLAIMS
BASED ON DISMISSAL IN PRIOR
RELATED MATTER**

26 Plaintiffs,

27 v.

28 COMMUNITY.COM, INC.;

Defendant.

1 On March 18, 2021, Shawn Adler and Gavin McDonough filed *Adler v.*
2 *Community.com, Inc.*, 21-cv-2416 (C.D. Cal.). [*Adler*, Dkt. 1.] The *Adler* case was
3 assigned to this Court on March 19, 2021. [*Adler*, Dkt. 6.] The plaintiffs filed an
4 amended complaint in that matter on April 5, 2021. [*Adler*, Dkt. 14.]

5 On June 8, 2021, Defendant moved to dismiss the *Adler* matter (“Motion”).
6 On August 2, 2021, the Court granted in part and denied in part the Motion. [*Adler*,
7 Dkt. 32.] Specifically, the Court dismissed the Telephone Consumer Protection Act
8 (“TCPA”) claims with prejudice, dismissed claims made under the Wiretap Act
9 § 2511 and the California Invasion of Privacy Act (“CIPA”) § 631 without leave to
10 amend, and denied the motion to dismiss claims made under CIPA §§ 632 and 632.7.

11 In its decision regarding the Wiretap Act and the CIPA § 631 claims dismissed
12 without leave to amend, the Court wrote, “If Plaintiffs learn additional facts in
13 discovery that would cure the legal deficiencies identified in this order, they may
14 seek leave to amend to re-plead these dismissed claims.” [*Adler*, Dkt. 32.]

15 Plaintiffs Adler and McDonough subsequently voluntarily dismissed their
16 claims with prejudice. [*Adler*, Dkt. 42.]

17 On March 31, 2023, Plaintiffs McGinnis and Boulton filed the instant matter
18 against Community.com, Inc. with primarily the same counsel that represented
19 plaintiffs in the *Adler* matter. [Dkt. 1.] Except for claims under the TCPA, which
20 were pled in *Adler* but are not pled here, the causes of action in *Adler* are identical
21 to the causes of action pled here. The Defendant, Community.com, Inc., is identical
22 in both cases.

23 After Plaintiffs named *Adler* as a Related Case in the Civil Cover Sheet [Dkt.
24 2], the Court transferred this action to this Court by Order dated April 7, 2023 [Dkt.
25 17].

26 Plaintiffs in this matter re-pled the CIPA § 631 and Wiretap Act claims that
27 were dismissed without leave to amend in *Adler* for purposes of preservation.
28

1 Further, Defendant would seek to dismiss the Wiretap Act and CIPA § 631 claims
2 on the same grounds raised in its *Adler* motion to dismiss. [*Adler*, Dkt. 32.]

3 Accordingly, the Parties jointly incorporate by reference their arguments
4 made with respect to the Wiretap Act and CIPA § 631 in the *Adler* Motion briefing
5 and argument [*Adler* Dkts. 23, 25, 29, and 31] for both parties' preservation
6 purposes, and respectfully ask that the Court dismiss the Wiretap Act and CIPA
7 § 631 claims on the same terms as in *Adler*: without leave to amend, but with
8 permission to seek leave to amend the complaint should discovery on any surviving
9 claims cure the legal deficiencies identified in the Court's order on the *Adler* Motion.
10 Unless such leave is granted, the Parties agree that discovery will relate only to the
11 remaining claims, if any, that survive Defendant's forthcoming motion to dismiss.

12

13 Dated: July 12, 2023

LIPPSMITH LLP

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ATTESTATION

Pursuant to Civil L.R. 5-4.3.4, I, Jaclyn L. Anderson, as the ECF user under whose credentials this document is filed, attest that concurrence in the filing of this document has been obtained from each of the other signatories.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct. Executed at Los Angeles, California this 12th day of July, 2023.

/s/ *Jaclyn L. Anderson*

JACLYN L. ANDERSON